IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6690 OF 2006

Vinayak Ramu Gharbade. . .. Petitioner .

vs.

Adinath Laxman Ganeshwade . .. Respondent .

Smt. A.R.X. Baxi for petitioner.

Mr. Sangam M. Sahasrabudhe for Respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 28th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner herein is the original defendant whereas the respondent is the original plaintiff. The plaintiff instituted a suit in the court of Civil Judge, Junior Division, Miraj for declaration of ownership on the basis of a sale deed executed on 21.12.1999. The plaintiff valued the suit under section 6(iv)(j) by treating the said suit for declaration, as if the subject matter in dispute is

not susceptible of monetary evaluation. The petitioner/defendant raised an objection in relation to the payment of court fee stamp and the jurisdiction of the trial court to try the suit. A preliminary issue came to be framed by the trial court and the finding is recorded that the suit is properly filed by paying a court fee stamp of Rs. 1000/- purportedly under clause 6(iv)(j) of the Bombay Court Fees Act.

3. The learned counsel for the petitioner has invited my attention to section 6(iv)(d) which reads thus :-

> "(d) for ownership etc. of immoveable property, etc.
>
> In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right , lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immoveable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee is leviable for a suit for possession on the basis of title of the subject-matter,

subject to a minimum fee of one hundred rupees."

.....

.....

whereas the third proviso reads thus :-

"Provided also that in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee."

In the present case, the consequential relief claimed by the plaintiff is of injunction and hence the plaintiff is obliged to pay one-half of the ad valorem fee as the matter squarely falls under section 6 (iv) (d) third proviso.

4. In the result, the impugned order passed by the trial Court is not sustainable in law and the same is quashed and set aside. The petitioner shall pay the difference of the court fee which is already paid and the fee now payable under section 6(iv)(d)

third proviso, within a period of six weeks from today in the trial Court and correctly make the valuation of the suit for the purpose of jurisdiction as well, so that appropriate orders can be obtained, if necessary, from the trial Court for presentation of the plaint to proper court.

5. Rule is made absolute in the above terms.

(A.P. Deshpande, J.)